IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO WESTERN DIVISION (DAYTON)

REED ELSEVIER, INC. through its LEXISNEXIS Division,		:	Case No. 3:10-CV-00248
	Plaintiff,	:	(Hon. Walter Herbert Rice)
v.		:	AFFIDAVIT OF BLAIR C. FENSTERSTOCK
CRAIG M. CROCKETT, as assignee of DEHART & CROCKETT, P.C. and CRAIG M. CROCKETT, P.C., d/b/a CROCKETT FIRM,		:	IN OPPOSITION TO PLAINTIFF'S MOTION FOR
		:	SUMMARY JUDGMENT ON ITS FIRST CLAIM FOR
CROOKETT THAN,	Defendants.	:	DECLARATORY RELIEF
		:	
	X		
STATE OF NEW YORK) : ss.:		
COUNTY OF NEW YORK)		

BLAIR C. FENSTERSTOCK, being duly sworn, hereby deposes and says as follows:

- 1. I am an attorney with the firm of Fensterstock & Partners LLP, counsel for Defendants in the above-captioned action. I am familiar with the proceedings in this case. I make this statement based on my personal knowledge of the facts set forth herein.
- 2. Attached as Exhibit A is a true and correct copy of Defendants' Arbitration Demand filed with the American Arbitration Association ("AAA") on February 25, 2010.
- 3. Attached as Exhibit B is a true and correct copy of Defendants' Amended Arbitration Demand filed with the AAA on March 24, 2010.
- 4. Attached as Exhibit C is a true and correct copy of Plaintiff's Answering Statement filed with the AAA on April 19, 2010.

- 5. Attached as Exhibit D is a true and correct copy of Defendants' June 3, 2010 letter to the AAA.
- 6. Attached as Exhibit E is a table of selected class arbitrations prepared by Defendants' counsel which includes five class arbitrations in which counsel for Plaintiff represented a party, and one in which counsel for Defendants represented a party. The table indicates for each matter the length of time between the filing of the arbitration demand and when the clause construction award was issued. This table was created from the information made available on the AAA's publicly accessible Class Arbitration Docket, found at http://www.adr.org/sp.asp?id=25562. The average time for the issuance of a clause construction award in these matters was over 1 year, 4 months. True and correct copies of the class arbitration dockets for each of the matters listed in Exhibit H, are attached hereto as Exhibit I, together with a true and correct copy of the clause construction award issued in *David Haro, et al. v. NCR Corporation, et al.*
- 7. Attached as Exhibit F is a true and correct copy of the AAA's Class Arbitration website home page.
- 8. Attached as Exhibit G is a true and correct copy of the AAA's Commercial Arbitration Rules.
- 9. Attached as Exhibit H is a true and correct copy of the AAA's Supplementary Rules for Class Arbitrations.
- 10. Attached as Exhibit I is a true and correct copy of the AAA's Policy on Class Arbitrations.
- 11. Attached as Exhibit J is a true and correct copy of a set of class arbitration decisions, publicly available on the AAA's website. These decisions are all from the clause construction award

phase under AAA Supplementary Rule 3. In these decisions, arbitration clauses with the "any controversy" or "any dispute" construction are held to permit class arbitration.

Sworn to before me this 23rd day of July, 2010

ELIZABETH L. KING

Notary Public, State of New York

No. 01442791170

Certificate Filed in N.Y. County

Qualified in Queens County

Commission Expires January 31,